owner removed coal without leaving such support. To the argument that the plaintiff by careful observation might not have been able to discover the defendant's breach of duty, the court answers that that is "one of the incidents attending the purchase of land over coal mines." Later the court refers to the right of the surface owner to sue, as a "right which from the nature of the case could not have had more than a doubtful existence before the actual damage occurred" — an admission which seems to detract from the weight of the earlier reasoning.

The English rule regards the plaintiff's right as a right to the ordinary undisturbed enjoyment of the surface. The defendant's right on the other hand is to excavate the minerals from the subjacent strata, and so long as he acts without disturbing the plaintiff, he is within his rights. When the subsidence occurs, the plaintiff's enjoyment of the surface is interfered with, and his right of action accrues. In an apparently analogous class of cases where a railroad builds an embankment but negligently fails to put in proper drainage culverts and flood water is at times thrown on the plaintiff's land, the courts seem almost universally to have held that the Statute runs, not from the building of the embankment, but from the time of actual damage to the plaintiff. *St. Louis, etc., Co.* v. *Briggs*, 52 Ark. 240. On the whole then it would seem that the position of the principal case is hardly to be supported as against the reasonable and convenient rule of the English courts.

THE PAROL EVIDENCE RULE AS APPLIED TO INSURANCE POLICIES. — The United States Supreme Court has handed down a decision that will have a far reaching effect upon the liability of insurance companies. The plaintiff brought action upon an insurance policy issued by an agent of the defendant. The policy contained conditions that it should be void if other insurance existed upon the property covered by its terms, and that no agent should have power to waive any condition of the policy unless such waiver were endorsed in writing upon the policy. The defence was that the property covered by the policy was in fact insured in another company at the time of the issuance of the policy. The plaintiff maintained that the defendant's agent, who had full powers to accept risks and issue policies, knew of the additional insurance when he issued the policy, and should be deemed to have waived the provision. The court, with three judges dissenting, held that the knowledge of the agent would not avoid the stipulation in the policy. *Assurance Co.* v. *Building Association*, 22 Sup. Ct. Rep. 133.

Although there is a conflict upon the point the great weight of authority is opposed to this decision. The reasoning of the principal case is that the insurance policy constitutes the contract of the parties, that by its terms the limitations of the agent's authority are brought home to the insured, and that to sustain the plaintiff's contention would be to vary a written contract, in violation of the parol evidence rule. As a matter of fact, however, a binding insurance contract is commonly made before the policy is issued. The agent of the insurer acting within the apparent scope of his authority agrees to assume the risk and issue the policy, and the insured agrees to pay for the policy when issued. The policy is merely the reduction into writing of a contract already existing, and if a loss occurs before the policy is issued the insurer is liable. *In-*

surance Co. v. *Colt*, 20 Wall. 560. It follows then that limitations upon the agent's powers contained in the policy cannot affect a contract previously entered into by the insured without knowledge of such limitations. *Lightbody* v. *Insurance Co.*, 23 Wend. (N. Y.) 18. Moreover if the policy is merely a reduction into written form of a valid oral contract previously made by the agent of the insurer, any misdescription of the terms of that contract, whether occurring through the mistake or fraud of the agent, will be rectified by a court of equity, and the insured may then recover upon the policy as amended. *Barnes* v. *Insurance Co.*, 75 Ia. 11. Most of the courts however have gone further, and in cases like that under consideration have allowed the insured to recover in an action at law upon the policy, holding the insurer estopped to set up in defence the stipulation avoiding liability. *Robbins* v. *Insurance Co.*, 149 N. Y. 477. The theory upon which an estoppel is raised would seem to be that the insurer through its agent has represented to the insured that the policy embodies their oral contract, and the insured relying upon that representation has paid his premium. This view raises the question whether the insured is justified in relying upon such a representation, a question admitting of a difference of opinion. The numerous and complicated provisions of such policies, the inexperience of the insured with legal forms, and the general custom to lay aside such papers without careful perusal, present an argument in support of the doctrine. On the other hand the danger of abuse and fraud and the prevalence of statutory forms of policies would tend towards the stricter rule holding the insured to constructive knowledge of the contents of these documents, and compelling him to first seek their reformation if he desires to escape their provisions. While the latter view would support the conclusion of the court in the principal case it is unfortunately not suggested. The force of the reasoning is weakened by the failure to distinguish between the policy as the contract of insurance, and as evidence of that contract, and between the rights of the insured before and after knowledge of the limitations upon the powers of the insurer's agent has been brought home to him.

THE MISSTATEMENT OF CONSIDERATION IN A DEED AS A BASIS FOR AN ACTION OF DECEIT. — At the present day the statement of consideration in a deed is not, so far as its accuracy is concerned, material. The fact that it is often, if not generally, grossly understated and that the public has learned to place no reliance on its truth has apparently led several courts into deciding that a false averment of consideration alone cannot give rise to an action of deceit. *Thorp* v. *Smith*, 51 Pac. Rep. 381 (Wash.); *Leonard* v. *Springer*, 34 Chic. Leg. News 121 (Ill.). In the latter case the defendant having only a lease of a building purported to convey the fee in consideration of $100,000; and procured his grantee to execute a deed of trust to secure an issue of notes. The plaintiff declared that she had purchased one of the notes relying on the averment of the consideration and had been damaged in consequence. The defendant demurred; and the demurrer was sustained on the ground that the public is not intended to rely on such statements.

It is hard to see how the case can be sustained. The declaration avers that the defendant made a statement knowing it to be false, that the plaintiff relied on it and was thereby damaged, and that the defend-